

May 2, 1973

## CONGRESSIONAL RECORD — SENATE

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By the time termination took effect in 1961 the tribe was operating at a \$250,000 annual deficit, and that became worse.

Finally, MEI agreed to enter partnership with a private developer and sell off 5,000 acres of land to non-Indians for a recreational home development around an artificial lake. That was seen as a last-ditch attempt to broaden the tax base and improve the economic picture.

Against that backdrop, an organization called DRUMS (Determination of Rights and Unity of Menominee Stockholders) took up its fight three years ago. It challenged the sale of tribal land, claiming only a two-thirds vote of the tribe could authorize that, and went to court to halt the development.

DRUMS staged rallies and demonstrations, marched on the State Capitol—and organized to win political control of the tribe's economic interests held by MEI. The dissidents got four members including Miss Deer, elected to the 11-member Menominee Stock and Voting Trust in 1971, and Miss Deer was elected chairman.

She was reelected last year when DRUMS solidified its hold on the trust, which names the directors of MEI.

Now, Miss Deer said, Menominees are unified in their support of the restoration bill. "We've created a tide now," she said, and national Indian groups have pledged their support of the act.

Miss Deer, 37, who left the University of Wisconsin Law School to devote full-time to the Menominee cause, is now chief lobbyist in Washington for the restoration bill. She was in Madison this week to meet with legislators and officials to seek support of the bill.

The bill would again make the federal government the trustee of Menominee land.

It also provides for preparation of a new tribal roll, to include the descendants of those on the "final" roll in 1954. Miss Deer estimates more than 1,000 young Menominees born since 1954 have not been enrolled as members of the tribe.

Under the bill, any persons with one-fourth or more Menominee blood would be eligible for nearly the same benefits and services the tribe received from the BIA before termination.

Restoration would take place within 13 months of passage of the bill, under the direction of a committee to be elected by the tribe.

It would also allow—but not require—the tribe to buy back land sold for development. Menominee County had a population of 2,600 in the 1970 census. Of that total, 300 were non-Indians.

[From the Capital Times, Apr. 18, 1973]

UW WOMAN GRAD ACTIVIST CHIEF OF  
MENOMINEES

(By Patricia L. Raymer)

WASHINGTON.—In 1953, for one brief moment, Ada Deer was a Hollywood starlet.

Columbia Pictures had chosen the 27-year-old Menominee as one of the "most beautiful Indian girls in America." Yet makeup men spent two hours painting her face to make her look more like an Indian for the grade B western. She was the only female Indian allowed to do more than grunt, and the script went like this:

Deer: "Did you meet the soldiers?"

Actor: "I do not speak to mere woman. I speak only to the chief."

A few days later, "The Battle of Rogue River" began its long journey to the late show. But the world had not heard its last from Ada Deer.

Today, when people ask to speak to the chief, it's Ada Deer who answers.

Aggressive, tough, determined and optimistic, 37-year-old Ada Deer is the modern-day "chief" of northern Wisconsin's Menominee Indian tribe.

She's in Washington to lobby for federal "restoration" of her tribe. Before Congress

recesses Friday, it is expected to consider a bill restoring federal aid and reservation status to the self-governing Menominees.

More than a decade ago, Congress decided the tribe was ready to move into the white man's world of sewer districts and depletion allowances, and closed out the federal books. Since becoming Wisconsin's newest (and poorest) county, the once-happy wild rice harvesters have fallen on hard times.

Although the call for Menominee restoration (included in the Indians' 20 demands during the Bureau of Indian Affairs takeover last fall) is a small part of the national Indian movement, Deer sees the bill as a possible landmark case.

"To the current Indian movement," says Deer, "the next few years are as important as the 1954 school desegregation decision was to blacks."

The tale of the Menominees says something about what has happened to many Indians. In a few years, they have gone from riches to rags. Indians and government officials alike now agree that termination was a real disaster.

Although the Menominee tribe is still intact, problems associated with self-government have been phenomenal. Land has been sold in bits and pieces to pay for services formerly provided by the government. Medical care is almost nonexistent and educational problems abound. About half the tribe is now on welfare.

"I don't know anyone who could have brought that bill so far so fast. The Menominees were a dead issue in Congress before she began working on it," says Rep. Lloyd Meeds (D-Wash.), chairman of the House Indian Affairs Subcommittee and co-sponsor of the Restoration Bill.

"Since I met Ada, life hasn't been the same," said Rep. Meeds. "Meeting her is like plugging into a switchboard with all lines full. When she's around, there's a charged atmosphere and you just get the feeling you want to do things."

She is not yet over the wonder of her sudden entry into the Washington political scene and is surprised by the number of invitations she receives to tell her story to Cabinet members, Senators and other government bigwigs. Yet, while her enthusiasm is childlike, her attitude is tough and serious.

For Deer, every social event is a business meeting and every business encounter is a social experience.

NCAI President Trimble sees Deer as "clearly one of today's Indian leaders. There are not too many Indians who don't know the name of Ada Deer."

He classifies her as a "unique tie between the radical and conservative Indians."

Deer's road to activism was a calculated one. She decided at an early age to involve herself with the Indian cause.

After being the first Menominee to graduate from the University of Wisconsin, she went on to the Columbia University School of Social Work in New York, from which, she believes, she was the first and only Indian to graduate.

Before taking on the Menominee cause full time, Deer spent 1½ years at the Wisconsin Law School, where she'll return when and if the Restoration Bill passes. Before law school she worked as a community organizer in New York's Bedford-Stuyvesant area, was program director of a Minneapolis Neighborhood House, served as a community service coordinator for the BIA, and directed a minority youth program in northern Wisconsin.

Ada Deer lived most of her first 18 years on the Menominee reservation in a one-room log cabin without electricity or running water. She is the oldest of nine children. Five lived beyond infancy.

Her father is a laborer still employed at the Menominee Lumber Mill, the tribe's only source of employment. Like a high percentage of male Indians past and present, he is

an alcoholic. Her mother is white, a nurse who came to the reservation while working for the BIA.

Deer attributes her activism to her mother, who since 1954 "has been clubbing me on the head to save the Menominees from termination."

Deer lives on 500 dollar a month salary from the Menominee Common Stock and Voting Trust, of which she is elected chairman. The Menominees have no tribal council, but are organized as a corporation, the chairman is the equivalent of Indian or tribal chief.

She has no official Washington residence and camps out with local friends.

"I know I can't keep up this kind of life forever, but basically I'm doing this because I want to," she says.

"Mainly, I want to show people who say nothing can be done in this society that it just isn't so. You don't have to collapse just because there's federal law in your way. Change it!"

Mr. NELSON. It is important that the Menominee restoration bill be introduced and considered by committee as early as is possible. Thus, one section of the restoration bill is being included in the legislation introduced today even though there is not unanimous support of this provision from the delegation. This section provides that the transfer of the Menominee land held by MEI to the Department of the Interior not take place for 2 years from the date of enactment of the Restoration Act. Although I believe that it should be possible to complete the necessary arrangements between the tribe, the landowners, and the Interior Department in a much shorter period of time, the section is being included in the bill at the request of another Member of the Wisconsin delegation who, other than that section, is in complete agreement with the principle of restoration.

Mr. President, now is the time for Congress to act and move toward righting the wrongs perpetrated on the Menominee people. We must reassert and reassume our treaty obligations toward the Menominee. The proposed bill would do just that: Protect their assets, lands, resources, and rights and provide the basic and necessary community services to which the Menominee people are justly entitled.

By Mr. ERVIN (for himself, Mr. ABOUREZK, Mr. BAKER, Mr. BAYH, Mr. BEALL, Mr. BENNETT, Mr. BIBLE, Mr. BROOKE, Mr. BURDICK, Mr. HARRY F. BYRD, JR., Mr. CHURCH, Mr. FANNIN, Mr. FONG, Mr. GOLDWATER, Mr. GRAVEL, Mr. GURNEY, Mr. HANSEN, Mr. HASKELL, Mr. HATFIELD, Mr. HATHAWAY, Mr. HRUSKA, Mr. HUMPHREY, Mr. INOUE, Mr. MANSFIELD, Mr. MCGEE, Mr. MCGOVERN, Mr. METCALF, Mr. MONDALE, Mr. MOSS, Mr. MUSKIE, Mr. NELSON, Mr. PACKWOOD, Mr. PELL, Mr. PERCY, Mr. RANDOLPH, Mr. SCOTT of Pennsylvania, Mr. STAFFORD, Mr. TAFT, Mr. THURMOND, Mr. TUNNEY, and Mr. WILLIAMS):

S. 1688. A bill to protect the civilian employees of the executive branch of the U.S. Government in the enjoyment of their constitutional rights and to prevent

unwarranted governmental invasions of their privacy. Referred to the Committee on the Judiciary.

#### FEDERAL EMPLOYEE PRIVACY BILL

Mr. ERVIN. Mr. President, I introduce for appropriate reference a bill to protect the civilian employees of the executive branch of the U.S. Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy.

I take this action on behalf of myself and the following cosponsors of this measure: Messrs. ABOWEZEK, BAKER, BAYH, BEALL, BENNETT, BIBLE, BROOKE, BURDICK, HARRY F. BYRD, JR., CHURCH, FANNIN, FONG, GOLDWATER, GRAVEL, GURNEY, HANSEN, HASKELL, HATFIELD, HATHAWAY, HRUSKA, HUMPHREY, INOUE, MANSFIELD, MCGEE, MCGOVERN, METCALF, MONDALE, MOSS, MUSKIE, NELSON, PACKWOOD, PELL, PERCY, RANDOLPH, SCOTT of Pennsylvania, STAFFORD, TAFT, THURMOND, TUNNEY, and WILLIAMS.

The need to protect the private lives of Federal employees from unwarranted Government intrusion is today even more critical than when I first introduced legislation to protect the individual liberties of Federal employees in 1966. Reductions-in-force, the administration's present scheme to cut down the number of positions in the Federal bureaucracy, has served to intensify the pressure on individuals to sacrifice their freedom of speech and action for the sake of Federal employment, job security, and promotion. At the same time, the apocalyptic vision of massive Government data banks monitoring the intimate details of the private lives of Federal employees has become more than just a nightmare. It is a reality.

The legislation I introduce today is identical to S. 1438 which passed the Senate by unanimous consent in the 92d Congress, only to die in the House Post Office and Civil Service Committee. Similar legislation has been approved by this body a total of four times in the past. Over the years this legislation has become known as the "Federal Employees' Bill of Rights." It is designed to assure minimal guarantees of individual privacy and freedom to present and potential employees of the Federal Government.

One aim of this legislation is to prohibit requirements that Federal employees and applicants for Government employment disclose their race, religion, or national origin; or submit to questioning about their religion, personal relationships or sexual attitudes, through interviews, psychological tests, or polygraphs. It would prohibit requirements that employees attend government-sponsored meetings and lectures or participate in outside activities unrelated to their employment; report on their outside activities or undertakings unrelated to their work; support political candidates or attend political meetings. It makes it illegal to coerce an employee to buy bonds or make charitable contributions. It prohibits requirements that he disclose his own personal assets, liabilities, or expenditures, or those of any member of his family, unless, in the case of certain specified employees, such items would tend to show a conflict of interest.

It provides a right to have a counsel or other person present, if the employee wishes, at an interview which may lead to disciplinary proceedings. It accords the rights to a civil action in a Federal court for violation or threatened violation of the act. Finally, it establishes a Board on Employees' Rights to receive and conduct hearings on complaints of violation of the act, and to determine and administer remedies and penalties.

I have carefully considered possible modifications of this legislation which twice passed the Senate in the last Congress. The most frequently suggested of these changes are, first, dropping the Board on Employees' Rights, and second, completely exempting the Central Intelligence Agency and the National Security Agency. However, upon reflection I have decided against such changes. It seems to me that the Board on Employees' Rights is a vitally-needed, less expensive and less cumbersome vehicle for vindicating the rights protected by this legislation. Moreover, recent Central Intelligence Agency disciplinary proceedings, in which requests for the presence of counsel or even of colleagues from the Agency have been summarily turned down, make clear the need for the protections of this legislation subject only to certain partial exemptions accorded to these agencies. Therefore, I have decided to reintroduce the Federal Employees Bill of Rights exactly as the Senate passed it last year, and the year before that.

The reasons for enacting such legislative constraints or bureaucratic invasions of Federal employee privacy are three-fold: First is the immediate need to establish some minimal statutory basis for the protection of the rights and liberties of those who work for the Federal Government now and in the future. Second is the need to attract and to retain the best qualified employees for an efficient and effective Federal career service. Third is the special leadership role which the Federal Government plays in the field of employment practices vis-à-vis State and local governments as well as private business and industry.

The compelling need for this legislation is apparent from the hundreds upon hundreds of complaints about bureaucratic invasions of employee privacy which have come to my attention as chairman of the Subcommittee on Constitutional Rights. Both the hearings on privacy and the rights of Federal employees held by the subcommittee and the many letters the subcommittee has received catalog the reality of continuing flagrant invasions of the privacy and individual liberties of present and potential Federal employees.

To illustrate the need for legislative safeguards for the individual privacy and liberty of Government employees, it may be helpful to note some of the specific kinds of complaints which this proposal is designed to redress.

One important area of widespread invasions of privacy and personal liberties involves questioning of present and potential Federal employees about their race, religion, and national origin through questionnaires and oral inquiries from supervisors. The legislation in-

troduced today is designed to protect present and future Federal employees from the dilemma of the grandson of an American Indian who told the subcommittee that he had exercised his option not to complete a so-called voluntary minority status questionnaire. He did not know how to fill it out. Soon he received a personal memorandum from his supervisor "requesting" him to complete a new questionnaire and "return it immediately." He wrote:

I personally feel that if I do not comply with this request (order), my job or any promotion which comes up could be in jeopardy.

Clearly there is a need to reaffirm the intent of Congress that a person's religion, race, and national or ethnic origin, or that of his forebearers, have nothing to do with his ability or qualifications to perform the duties of a Federal position, or to qualify for a promotion. Such matters are none of the Government's business.

Other complaints focus on the need for direct legislative prohibition of both affirmative and negative constraints on employee opinions, behavior and outside activities. These complaints catalogue infringements and threatened infringements on first amendment freedoms of employees: freedom to think for themselves free of Government indoctrination; freedom to choose their outside civic, social, and political activities free of official guidance; as well as the freedom to refuse to participate at all without reporting to supervisors. To my mind, a Federal employee's social and civic activities outside his employment responsibilities should be none of the Government's business.

Illustrative of the pervasive interference with the outside activities of Federal employees is a recent NASA directive forbidding all communications with the Congress and the White House:

At no time, under no circumstances, will anyone . . . communicate directly with members of Congress and the White House, on any subject, without notifying me and obtaining my approval in advance.

Reportedly similar directives have been issued in other agencies.

On December 30, 1972, the Defense Department issued the following command:

The White House has this morning made an announcement of international consequences concerning the resumption of peace negotiations and a suspension of some military activities in Southeast Asia.

There must be absolutely no, repeat no, comment of any sort whatsoever from any D.O.D. personnel, civilian and military, of whatever rank.

There is to be no comment, no speculation, no elaboration and no discussion on the subjects involved.

In a slightly different vein, a division chief demanded that his supervisors report "the names—of employees—who are participating in any activities including such things as PTA in integrated school, sports activities which are intersocial, and such things as Great Books discussion groups which have integrated memberships."

With one complaint of attempted indoctrination of employees at a Federal

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installation, a civil servant enclosed a memorandum taken from a bulletin board stating the time, place, and date of a lecture by a sociology professor on the subject of the importance of racial integration. Attendance was to be voluntary but the notice stated that a record would be made of those attending. Concerning such a practice, one witness at subcommittee hearings commented:

If I had been a federal employee and I cared anything about my job, I would have been at that lecture.

Other witnesses agreed that taking notice of attendance at such meetings constituted a form of coercion to attend.

Some of the most shocking invasions of personal privacy arise out of interviews, interrogations, and personality tests to which many Federal employees and applicants for Federal employment are forced to submit. Many complaints focus on mass programs in which, as a matter of routine practice, agency officials pressure applicants or employees to reveal intimate details about their habits, thoughts, and attitudes on matters unrelated to their qualifications and ability to perform a job. Federal employees and applicants for Federal employment are routinely asked to comment on such matters as:

My sex life is satisfactory.  
I have never been in trouble because of my sex behavior.  
Everything is turning out just like the prophets of the Bible said it would.  
I loved my father.  
I am very strongly attracted by members of my own sex.  
I go to church almost every week.  
I believe in the second coming of Christ.  
I believe in a life hereafter.  
I have never indulged in any unusual sex practices.  
I am worried about sex matters.  
I am very religious (more than most people).  
I loved my mother.  
I believe there is a Devil and a Hell in afterlife.  
I believe there is a God.  
Once in a while I feel hate toward members of my family whom I usually love.  
I wish I were not bothered by thoughts about sex.

Clearly there is a need to prohibit investigators, as well as personnel, security and medical specialists from indiscriminately asking individuals to supply, orally or through tests, data on religion, family, sex and other personal matters.

Even more unconscionable is the use of polygraphs, or so-called "lie detectors," on Federal employees. Congressional investigation has shown that there is no scientific validation for the effectiveness or accuracy of polygraphs. Yet despite this and the invasion of privacy involved in strapping an individual to a machine in order to elicit from him information concerning his personal relationships with persons connected with him by blood or marriage, or concerning his religious beliefs, practices or concerning his attitude or conduct with respect to sexual matters, lie detectors are being used in various agencies of the Federal Government for purposes of screening applicants or for pursuing investigations. It is time the Federal Government ceased this senseless outrage to personal privacy.

The hearing record and subcommittee complaint files also amply document the need for statutory protections against various forms of coercion of employees to buy bonds and contribute to causes. It seems to me that each Federal employee, like any other citizen in the United States, is the best judge of his capacity, in the light of his financial obligations, to participate or decide whether he will participate and the extent of his participation in a bond drive. That is a basic determination which he and he alone should make. I think there is an interference with fundamental rights when coercion of a psychological or economic nature is brought on a Federal employee, even to make him do right. I think a man has to have a choice of acting unwisely as well as wisely, if he is going to have any freedom at all.

And yet the subcommittee has received from employees and their organizations numerous reports of intimidation, threats of loss of job, and security clearances and of denial of promotion for employees who do not participate to the extent supervisors wish. Many of these complaints of intimidation come out of agencies which have policy statements and administrative rules against such coercion. It is clear that such policy statements and rules are not enough.

In addition, millions of present and potential Federal employees have been required to submit to comprehensive questionnaires designed to elicit detailed information on the employee's personal finances, debts and property ownership, and those of his family. I believe that the conflict-of-interest statutes, and the many other laws governing conduct of employees, together with appropriate implementing regulations, are sufficient to protect the Government from dishonest employees. This proposal is, therefore, designed to reduce to reasonable proportions questionnaires which now require Federal employees to list "all assets, or everything you and your immediate family own, including date acquired and cost or fair market value at acquisition. Cash in banks, cash anywhere else, due from others—loans, et cetera, automobiles, securities, real estate, cash surrender of life insurance; personal effects and household furnishings and other assets."

The subcommittee hearings and complaint files further document the need for having legal counsel, a friend or other person present when a Federal employee is subjected to an official interrogation or investigation that could lead to the loss of his job or disciplinary action. I have received numerous complaints from employees charged with no crime who have been subjected to intensive interrogations by Defense Department investigators who ask intimate questions, make sweeping allegations, and threaten dire consequences unless consent is given to polygraph tests. Employees have been ordered to confess orally or to write and sign statements. Such interviews have been conducted after denial of the employee's request for presence of supervisor, counsel or friend, and in several instances the interrogations have resulted in revocation of a security clearance, or denial of access to classified information by transfer or reassignment,

with the resulting loss of promotion opportunities.

Several agencies contend that right to counsel is now granted in formal adverse action proceedings and that appeals procedures make this section unnecessary for informal questioning. Testimony and complaints from employees demonstrate that this machinery does not effectively secure the opportunity of the employee to defend himself early enough in the investigation to allow a meaningful defense.

As testimony at the subcommittee hearings as well as subsequent investigation of complaints have demonstrated, employee rights are only as secure as the means set up for their enforcement. There is overwhelming evidence that employees have heretofore frequently lacked appropriate remedies either in the courts or the Civil Service Commission for pursuing rights which belong to them as citizens. Clearly a Board on Employees' Rights is needed to provide an additional means by which violations of the privacy and liberty of present and potential Federal employees can be redressed and prevented.

No one pretends that this bill is going to cure everything that is wrong with the Federal service. But it is a beginning step toward the safeguarding of personal privacy and individual liberties. In the process it will set a valuable precedent for more comprehensive privacy legislation in the future.

Mr. President, I ask unanimous consent that the text of my proposed bill to protect the civilian employees of the executive branch of the U.S. Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 1688

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. It shall be unlawful for any officer of any executive department or any executive agency of the United States Government, or for any person acting or purporting to act under his authority, to do any of the following things:

(a) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, or any person seeking employment in the executive branch of the United States Government, to disclose his race, religion, or national origin, or the race, religion, or national origin of any of his forebears: *Provided, however,* That nothing contained in this subsection shall be construed to prohibit inquiry concerning the citizenship of any such employee or person if his citizenship is a statutory condition of his obtaining or retaining his employment: *Provided further,* That nothing contained in this subsection shall be construed to prohibit inquiry concerning the national origin or citizenship of any such employee or person or of his forebears, when such inquiry is deemed necessary or advisable to determine suitability for assignment to activities or undertakings related to the national security within the United States or to activities or undertakings of any nature outside the United States.

(b) To state or intimate, or to attempt to state or intimate, to any civilian employee

of the United States serving in the department or agency that any notice will be taken of his attendance or lack of attendance at any assemblage, discussion, or lecture held or called by any officer of the executive branch of the United States Government, or by any person acting or purporting to act under his authority, or by any outside parties or organizations to advise, instruct, or indoctrinate any civilian employee of the United States serving in the department or agency in respect to any matter or subject other than the performance of official duties to which he is or may be assigned in the department or agency, or the development of skills, knowledge, or abilities which qualify him for the performance of such duties: *Provided, however,* That nothing contained in this subsection shall be construed to prohibit taking notice of the participation of a civilian employee in the activities of any professional group or association.

(c) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to participate in any way in any activities or undertakings unless such activities or undertakings are related to the performance of official duties to which he is or may be assigned in the department or agency, or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties.

(d) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to make any report concerning any of his activities or undertakings unless such activities or undertakings are related to the performance of official duties to which he is or may be assigned in the department or agency, or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties, or unless there is reason to believe that the civilian employee is engaged in outside activities or employment in conflict with his official duties.

(e) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, or any person applying for employment as a civilian employee in the executive branch of the United States Government, to submit any interrogation or examination or to take any psychological test which is designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters: *Provided, however,* That nothing contained in this subsection shall be construed to prevent a physician from eliciting such information or authorizing such tests in the diagnosis or treatment of any civilian employee or applicant where such physician deems such information necessary to enable him to determine whether or not such individual is suffering from mental illness: *Provided further, however,* That this determination shall be made in individual cases and not pursuant to general practice or regulation governing the examination of employees or applicants according to grade, agency, or duties: *Provided further, however,* That nothing contained in this subsection shall be construed to prohibit an officer of the department or agency from advising any civilian employee or applicant of a specific charge of sexual misconduct made against that person, and affording him an opportunity to refute the charge.

(f) To require or request, or attempt to require or request, any civilian employee of the United States serving in the department or agency, or any person applying for employment as a civilian employee in the executive branch of the United States Government, to take any polygraph test designed to elicit

from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

(g) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to support by personal endeavor or contribution of money or any other thing of value the nomination or the election of any person or group of persons to public office in the Government of the United States or of any State, district, Commonwealth, territory, or possession of the United States, or to attend any meeting held to promote or support the activities or undertakings of any political party of the United States or of any State, district, Commonwealth, territory, or possession of the United States.

(h) To coerce or attempt to coerce any civilian employee of the United States serving in the department or agency to invest his earnings in bonds or other obligations or securities issued by the United States or any of its departments or agencies, or to make donations to any institution or cause of any kind: *Provided, however,* That nothing contained in this subsection shall be construed to prohibit any officer of any executive department or any executive agency of the United States Government, or any person acting or purporting to act under his authority, from calling meetings and taking any action appropriate to afford any civilian employee of the United States the opportunity voluntarily to invest his earnings in bonds or other obligations or securities issued by the United States or any of its departments or agencies, or voluntarily to make donations to any institution or cause.

(i) To require or request, or attempt to require or request, any civilian employee of the United States serving in the department or agency to disclose any items of his property, income, or other assets, source of income, or liabilities, or his personal or domestic expenditures or those of any member of his family or household: *Provided, however,* That this subsection shall not apply to any civilian employee who has authority to make any final determination with respect to the tax or other liability of any person, corporation, or other legal entity to the United States, or claims which require expenditure of moneys of the United States: *Provided further, however,* That nothing contained in this subsection shall prohibit the Department of the Treasury or any other executive department or agency of the United States Government from requiring any civilian employee of the United States to make such reports as may be necessary or appropriate for the determination of his liability for taxes, tariffs, custom duties, or other obligations imposed by law.

(j) To require or request, or to attempt to require or request, any civilian employee of the United States embraced within the terms of the proviso in subsection (i) to disclose any items of his property, income, or other assets, source of income, or liabilities, or his personal or domestic expenditures or those of any member of his family or household other than specific items tending to indicate a conflict of interest in respect to the performance of any of the official duties to which he is or may be assigned.

(k) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, who is under investigation for misconduct, to submit to interrogation which could lead to disciplinary action without the presence of counsel or other person of his choice, if he so requests: *Provided, however,* That a civilian employee of the United States serving in the Central Intelligence Agency or the National Security

Agency may be accompanied only by a person of his choice who serves in the agency in which the employee serves, or by counsel who has been approved by the agency for access to the information involved.

(l) To discharge, discipline, demote, deny promotion to, relocate, reassign, or otherwise discriminate in regard to any term or condition of employment of, any civilian employee of the United States serving in the department or agency, or to threaten to commit any of such acts, by reason of the refusal or failure of such employee to submit to or comply with any requirement, request, or action made unlawful by this Act, or by reason of the exercise by such civilian employee of any right granted or secured by this Act.

SEC. 2. It shall be unlawful for any officer of the United States Civil Service Commission, or for any person acting or purporting to act under his authority, to do any of the following things:

(a) To require or request, or to attempt to require or request, any executive department or any executive agency of the United States Government, or any officer or employee serving in such department or agency, to violate any of the provisions of section 1 of this Act.

(b) To require or request, or to attempt to require or request, any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, or any person applying for employment in the executive branch of the United States Government, or any civilian employee of the United States serving in any department or agency of the United States Government, to submit to any interrogation or examination or to take any psychological test which is designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters: *Provided, however,* That nothing contained in this subsection shall be construed to prevent a physician from eliciting such information or authorizing such tests in the diagnosis or treatment of any civilian employee or applicant where such physician deems such information necessary to enable him to determine whether or not such individual is suffering from mental illness: *Provided further, however,* That this determination shall be made in individual cases and not pursuant to general practice or regulation governing the examination of employees or applicants according to grade, agency, or duties: *Provided, further, however,* That nothing contained in this subsection shall be construed to prohibit an officer of the Civil Service Commission from advising any civilian employee or applicant on a specific charge of sexual misconduct made against that person, and affording him an opportunity to refute the charge.

(c) To require or request, or to attempt to require or request, any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, or any person applying for employment in the executive branch of the United States Government, or any civilian employee of the United States serving in any department or agency of the United States Government, to take any polygraph test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

SEC. 3. It shall be unlawful for any commissioned officer, as defined in section 101 of title 10, United States Code, or any member of the Armed Forces acting or purporting



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to act under his authority, to require or request, or to attempt to require or request, any civilian employee of the executive branch of the United States Government under his authority or subject to his supervision to perform any of the acts or submit to any of the requirements made unlawful by section 1 of this Act.

SEC. 4. Whenever any officer of any executive department or any executive agency of the United States Government, or any person acting or purporting to act under his authority, or any commissioned officer as defined in section 101 of title 10, United States Code, or any member of the Armed Forces acting or purporting to act under his authority, violates or threatens to violate any of the provisions of section 1, 2, or 3 of this Act, any civilian employee of the United States serving in any department or agency of the United States Government, or any person applying for employment in the executive branch of the United States Government, or any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, affected or aggrieved by the violation or threatened violation, may bring a civil action in his own behalf or in behalf of himself and others similarly situated, against the offending officer or person in the United States district court for the district in which the violation occurs or is threatened, or the district in which the offending officer or person is found, or in the United States District Court for the District of Columbia, to prevent the threatened violation or to obtain redress against the consequences of the violation. The Attorney General shall defend all officers or persons sued under this section who acted pursuant to an order, regulation, or directive, or who, in his opinion, did not willfully violate the provisions of this Act. Such United States district court shall have jurisdiction to try and determine such civil action irrespective of the actuality or amount of pecuniary injury done or threatened, and without regard to whether the aggrieved party shall have exhausted any administrative remedies that may be provided by law, and to issue such restraining order, interlocutory injunction, permanent injunction, or mandatory injunction, or enter such other judgment or decree as may be necessary or appropriate to prevent the threatened violation, or to afford the plaintiff and others similarly situated complete relief against the consequences of the violation. With the written consent of any person affected or aggrieved by a violation or threatened violation of section 1, 2, or 3 of this Act, any employee organization may bring such action on behalf of such person, or may intervene in such action. For the purposes of this section, employee organizations shall be construed to include any brotherhood, council, federation, organization, union, or professional association made up in whole or in part of civilian employees of the United States and which has as one of its purposes dealing with departments, agencies, commissions, and independent agencies of the United States concerning the condition and terms of employment of such employees.

SEC. 5. (a) There is hereby established a Board on Employees' Rights (hereinafter referred to as the "Board"). The Board shall be composed of three members, appointed by the President, by and with the advice and consent of the Senate. The President shall designate one member as chairman. No more than two members of the Board may be of the same political party. No member of the Board shall be an officer or employee of the United States Government.

(b) The term of office of each member of the Board shall be five years, except that (1) of those members first appointed, one shall serve for five years, one for three years, and one for one year, respectively, from the date

of enactment of this Act, and (2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(c) Members of the Board shall be compensated at the rate of \$75 a day for each day spent in the work of the Board, and shall be paid actual travel expenses and per diem in lieu of subsistence expenses when away from their usual places of residence, as authorized by section 5703 of title 5, United States Code.

(d) Two members shall constitute a quorum for the transaction of business.

(e) The Board may appoint and fix the compensation of such officers, attorneys, and employees, and make such expenditures, as may be necessary to carry out its functions.

(f) The Board shall make such rules and regulations as shall be necessary and proper to carry out its functions.

(g) The Board shall have the authority and duty to receive and investigate written complaints from or on behalf of any person claiming to be affected or aggrieved by any violation or threatened violation of this Act and to conduct a hearing on each such complaint. Within ten days after the receipt of any such complaint, the Board shall furnish notice of the time, place, and nature of the hearing thereon to all interested parties. The Board shall render its final decision with respect to any complaint within thirty days after the conclusion of its hearings thereon.

(h) Officers or representatives of any Federal employee organization in any degree concerned with employment of the category in which any alleged violation of this Act occurred or is threatened shall be given an opportunity to participate in each hearing conducted under this section, through submission of written data, views, or arguments, and in the discretion of the Board, with opportunity for oral presentation. Government employees called upon by any party or by any Federal employee organization to participate in any phase of any administrative or judicial proceeding under this section shall be free to do so without incurring travel cost or suffering loss in leave or pay; and all such employees shall be free from restraint, coercion, interference, intimidation, or reprisal in or because of their participation. Any periods of time spent by Government employees during such participation shall be held and considered to be Federal employment for all purposes.

(i) Insofar as consistent with the purposes of this section, the provisions of subchapter II of chapter 5 of title 5, United States Code, relating to the furnishing of notice and manner of conducting agency hearings, shall be applicable to hearings conducted by the Board under this section.

(j) If the Board shall determine after hearing that a violation of this Act has not occurred or is not threatened, the Board shall state its determination and notify all interested parties of such determination. Each such determination shall constitute a final decision of the Board for purposes of judicial review.

(k) If the Board shall determine that any violation of this Act has been committed or threatened by any civilian officer or employee of the United States, the Board shall immediately (1) issue and cause to be served on such officer or employee an order requiring such officer or employee to cease and desist from the unlawful act or practice which constitutes a violation, (2) endeavor to eliminate any such unlawful act or practice by informal methods of conference, conciliation, and persuasion, and (3) may—

(A) (1) in the case of the first offense by any civilian officer or employee of the United States, other than any officer appointed by the President, by and with the advice and consent of the Senate, issue an official reprimand against such officer or employee or or-

der the suspension without pay of such officer or employee from the position or office held by him for a period of not to exceed fifteen days, and (11) in the case of a second or subsequent offense by any such officer or employee, order the suspension without pay of such officer or employee from the position or office held by him for a period of not to exceed thirty days or order the removal of such officer or employee from such position or office; and

(B) in the case of any offense by any officer appointed by the President, by and with the advice and consent of the Senate, transmit a report concerning such violation to the President and the Congress.

(1) If the Board shall determine that any violation of this Act has been committed or threatened by any officer of any of the Armed Forces of the United States, or any person purporting to act under authority conferred by such officer, the Board shall (1) submit a report thereon to the President, the Congress, and the Secretary of the military department concerned, (2) endeavor to eliminate any unlawful act or practice which constitutes such a violation by informal methods of conference, conciliation, and persuasion, and (3) refer its determination and the record in the case to any person authorized to convene general courts-martial under section 822 (article 22) of title 10, United States Code. Thereupon such person shall take immediate steps to dispose of the matter under chapter 47 of title 10, United States Code (Uniform Code of Military Justice).

(m) Any party aggrieved by any final determination or order of the Board may institute, in the district court of the United States for the judicial district wherein the violation or threatened violation of this Act occurred, or in the United States District Court for the District of Columbia, a civil action for the review of such determination or order. In any such action, the court shall have jurisdiction to (1) affirm, modify, or set aside any determination or order made by the Board which is under review, or (2) require the Board to make any determination or order which it is authorized to make under subsection (k), but which it has refused to make. The reviewing court shall set aside any finding, conclusion, determination, or order of the Board as to which complaint is made which is unsupported by substantial evidence on the record considered as a whole.

(n) The Board shall submit, not later than March 31 of each year, to the Senate and House of Representatives, respectively, a report on its activities under this section during the immediately preceding calendar year, including a statement concerning the nature of all complaints filed with it, its determinations and orders resulting from hearings thereon, and the names of all officers or employees of the United States with respect to whom any penalties have been imposed under this section.

(o) There are authorized to be appropriated sums necessary, not in excess of \$100,000, to carry out the provisions of this section.

SEC. 6. Nothing contained in this Act shall be construed to prohibit an officer of the Central Intelligence Agency or of the National Security Agency from requesting any civilian employee or applicant to take a polygraph test, or to take a psychological test, designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters, or to provide a personal financial statement, if the Director of the Central Intelligence Agency or his designee or the Director of the National Security Agency or his designee makes a personal finding with regard to each individual to be so tested or examined that

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such test or information is required to protect the national security.

SEC. 7. No civilian employee of the United States serving in the Central Intelligence Agency or the National Security Agency, and no individual or organization acting in behalf of such employee, shall be permitted to invoke the provisions of sections 4 and 5 without first submitting a written complaint to the agency concerned about the threatened or actual violation of this Act and affording such agency one hundred and twenty days from the date of such complaint to prevent the threatened violation or to redress the actual violation: *Provided, however*, That nothing in this Act shall be construed to affect any existing authority of the Director of Central Intelligence under section 403(c), of title 50, United States Code, and any authorities available to the National Security Agency under section 833 of title 50, United States Code, to terminate the employment of any employee.

SEC. 8. Nothing in this Act shall be construed to affect in any way the authority of the Directors of the Central Intelligence Agency or the National Security Agency to protect or withhold information pursuant to statute or executive order. The personal certification by the Director of the agency that disclosure of any information is inconsistent with the provision of any statute or Executive order shall be conclusive and no such information shall be admissible in evidence in any interrogation under section 1 (k) or in any civil action under section 4 or in any proceeding or civil action under section 5.

SEC. 9. This Act shall not be applicable to the Federal Bureau of Investigation.

SEC. 10. Nothing contained in sections 4 and 5 shall be construed to prevent establishment of department and agency grievance procedures to enforce this Act, but the existence of such procedures shall not preclude any applicant or employee from pursuing the remedies established by this Act or any other remedies provided by law: *Provided, however*, That if under the procedures established, the employee or applicant has obtained complete protection against threatened violations or complete redress for violations, such action may be pleaded in bar in the United States district court or in proceedings before the Board on Employee Rights: *And provided further*, That if an employee elects to seek a remedy under either section 4 or section 5, he waives his right to proceed by an independent action under the remaining section.

SEC. 11. If any provision of this Act or the application of any provision to any person or circumstance shall be held invalid, the remainder of this Act or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

By Mr. GRAVEL (for himself, Mr. THURMOND, Mr. RANDOLPH, Mr. FANNIN, Mr. HUMPHREY, Mr. GOLDWATER, Mr. GURNEY, and Mr. SCOTT of Pennsylvania):

S. 1690. A bill to establish a National Amateur Sports Development Foundation. Referred to the Committee on Commerce.

## NATIONAL AMATEUR SPORTS DEVELOPMENT FOUNDATION

Mr. GRAVEL. Mr. President, last September I introduced legislation to establish a National Amateur Sports Development Foundation. At that time I pointed out that in the United States there exists no organization responsible for or concerned with the policy, planning, conduct, and development of

all kinds of sports for individuals of all ages and socioeconomic status. The need for such an organization has become even more apparent over the past 7 months, and today I am again introducing legislation to create a Sports Foundation.

The bill I am introducing today for myself, Mr. THURMOND, Mr. GURNEY, Mr. SCOTT of Pennsylvania, Mr. RANDOLPH, Mr. FANNIN, Mr. HUMPHREY, and Mr. GOLDWATER is a significantly improved version of S. 4038, which I introduced in the 92d Congress. Many worthwhile modifications in that bill have been proposed by individuals and groups interested in sports development, and we have taken these into account in redrafting our legislation. We are particularly indebted to the members of our National Amateur Sports Development Foundation Advisory Committee, for the role they played in preparing this legislation for reintroduction. Members of that committee met with Senator THURMOND and me late last fall for a 2-day working symposium on this bill. Their advice, both at that meeting and during the months that have followed, have proved invaluable.

Mr. President, I ask unanimous consent that there be printed at this point in the RECORD the names of the members of the National Amateur Sports Development Foundation Advisory Committee, and the reports of their subcommittees, issued at the conclusion of their symposium here in Washington, November 30, and December 1, 1972.

I also ask unanimous consent that the National Amateur Sports Development Foundation Act of 1973 be printed in the RECORD following the reports of the subcommittees.

There being no objection, the material and bill were ordered to be printed in the RECORD, as follows:

## NATIONAL AMATEUR SPORTS DEVELOPMENT FOUNDATION ADVISORY COMMITTEE

Dr. Tenley Albright, 1956 Olympic Women's Figure Skating Gold Medalist.

Mr. Frank Bare, Executive Director, United States Collegiate Sports Council.

Mr. Bob Beattie, Executive Director, International Ski Racers Association.

Honorable H. A. (Red) Boucher, Lieutenant Governor, State of Alaska.

Ms. Suzanne S. Chaffee, Co-Executive Director, World Sports Foundation.

Dr. Walter Cooper, Assistant Dean, College of Education and Psychology, University of Southern Mississippi, Hattiesburg, Mississippi.

Dr. James E. Counsilman, Swimming Coach and Professor of Physical Education, Indiana University.

Dr. Albert B. Craig, Jr., President, American College of Sports Medicine.

Mr. Buck Dawson, Executive Director, International Swimming Hall of Fame, Inc.

Ms. Donna de Varona, 1964 Olympic Swimming Gold Medalist.

Mr. Frank Dolson, Columnist, *Philadelphia Inquirer*.

Mr. Lee P. Eilbracht, Secretary-Treasurer, American Association of College Baseball Coaches.

Dr. William Exum, Athletic Director, Kentucky State College.

Dr. Warren Giese, Chairman, Department of Physical Education for Men, University of South Carolina.

Mr. Richard E. Harkins, Executive Direc-

tor, The International Supreme Council, Order of De Molay.

Dr. Jesse Hawthorne, Chairman, Department of Health and Physical Education, East Texas State University.

Mr. John E. Horton, Vice President, National Academy of Sport.

Mr. Edward Humberger, Director, Sports for People.

Mr. Rafer Johnson, 1960 Olympic Decathlon Gold Medalist.

Dr. Robert Kane, First Vice President, United States Olympic Committee.

Dr. Frances Koenig, Women's Physical Education Department, Central Michigan University.

Mr. C. Thomas McMillen, All-American Basketball Player, Olympic Team 1972.

Dr. Lucille Magnuson, Women's Physical Education Department, Pennsylvania State University.

Dr. Roswell D. Merrick, Assistant Executive Secretary, American Association for Health, Physical Education, and Recreation.

Mr. William Mills, Director, Office of Recreation, Physical Education, and Athletics, Bureau of Indian Affairs.

Dr. Henry W. Morton, Chairman, Department of Political Science, Queens College.

Dr. Bruce S. Old, Vice President, Arthur D. Little, Inc.

Mr. Peter L. Oliver, Consultant, Arthur D. Little, Inc.

Mr. Don E. Porter, Executive Secretary, Amateur Softball Assoc.

Mr. Glenn C. Randall, Executive Director, Special Olympics, Inc.

Mr. Marvin Sanderson, Senior Systems Analyst, System Development Corporation.

Mr. Donald Sawyer, Executive Vice President, Wilshire Newport, Inc.

Mr. Ross H. Smith, President, Eastern Collegiate Conference.

Mr. Marvin H. Sugarman, Sports Producer, President, Marvin H. Sugarman Productions, Inc.

Mr. H. B. Thompson, Athletic Director, Fisk University.

Mr. William A. Toomey, 1968 Olympic Decathlon Gold Medalist.

Dr. LeRoy Walker, Chairman, Department of Physical Education, North Carolina Central University.

Mr. William L. Wall, Executive Secretary, National Association of Basketball Coaches.

Mr. William Wallace, Sports Writer, *New York Times*.

Dr. Charlotte West, Women's Physical Education and Athletics Department, Southern Illinois University.

## COMMITTEE I—INITIAL ORGANIZATION OF A NATIONAL AMATEUR SPORTS FOUNDATION

Committee Members: Bruce Old (Chairman), Suzanne Chaffee, John Horton, Robert Kane, Ross Merrick, Marvin Sugarman, and Judie Shaw (Recorder).

## 1. Suggested word changes in the Bill

a. The word "Development" should be added to the title of the Foundation to emphasize sports development as its essential goal.

b. Several modifications in the description of the purposes of the Foundation should be made to clarify the intent.

c. The Board of Trustees should be required to meet at least quarterly, rather than annually.

## 2. Composition of the Board of Trustees

a. The Board membership should attempt to include persons with skills or knowledge in such fields as management, finance, fund raising, sports medicine, sports education, research, sports facilities, public relations and communications, physical education, sports sociology and psychology, and recent participation in international sports.

b. The nomination of the members of the Board should be by peer groups. For ex-

Approved For Release 2005/03/24 : CIA-RDP81-00818R000100060050-3

7 May 1973

JSW re Ervin bill:

Thinks Director should go on record  
for exemption.

Re allegation that CIA denies employees  
right to counsel:

Larry knows of no case in which we  
have refused counsel. Apparently guy  
waived hearing

Approved For Release 2005/03/24 : CIA-RDP81-00818R000100060050-3

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## ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM: John M. Maury  
Legislative Counsel  
7D43

EXTENSION

NO.

DATE

3 May 1973

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S  
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1.

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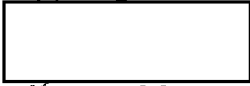
14.


15.


Attached for your information is an excerpt from yesterday's Congressional Record covering the introduction of the Ervin bill to protect the constitutional rights of Federal employees.

Your attention is invited to the marked passages in Ervin's remarks on page S.8166 where he explains that he can't give the Agency a complete exemption from the bill because it has recently acted irresponsibly in connection with disciplinary proceedings.

Before recommending a position to the Director on this matter, I would appreciate your comments on the allegation and your recommendations.

  
John M. Maury  
Legislative Counsel

cc: Messrs. Brownman, Warner, Broe, Thuermer, 

UNCLASSIFIED		CONFIDENTIAL		SECRET	
<b>OFFICIAL ROUTING SLIP</b>					
TO	NAME AND ADDRESS	DATE	INITIALS		
1	Legislative Counsel				
2					
3					
4					
5					
6					
ACTION		DIRECT REPLY		PREPARE REPLY	
APPROVAL		DISPATCH		RECOMMENDATION	
COMMENT		FILE		RETURN	
CONCURRENCE		INFORMATION		SIGNATURE	
<b>Remarks:</b>  <p style="text-align: center;">Handled orally.</p> <div style="text-align: center;">               John S. Warner         </div>					
<b>FOLD HERE TO RETURN TO SENDER</b>					
FROM: NAME, ADDRESS AND PHONE NO.				DATE	
OGC 7 D 01 Hqs				5/7/73	
UNCLASSIFIED		CONFIDENTIAL		SECRET	

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<b>TRANSMITTAL SLIP</b>		DATE <b>3 May 1973</b>
TO: <span style="border: 1px solid black; display: inline-block; width: 150px; height: 20px;"></span>		
ROOM NO.	BUILDING	
REMARKS:  <p style="text-align: center;">Per telephone conversation with Bill Bavis. The charge in question is noted on page S. 8166.</p>		
FROM: <span style="border: 1px solid black; display: inline-block; width: 130px; height: 20px;"></span>		
ROOM NO.	OLC	
<b>7D35</b>	<span style="border: 1px solid black; display: inline-block; width: 70px; height: 20px;"></span>	

FORM NO. 241  
1 FEB 55

REPLACES FORM 36-8  
WHICH MAY BE USED.

(47)

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